

AMENDMENTS TO SENATE BILLS 795 AND 844

BY: The Administration

A BILL ENTITLED

AN ACT concerning

**Public Service Commission – Electric Generation Facilities – Rate
Regulation and Contracts**

BY repealing and reenacting, with amendments,
Article – Public Utility Companies
Section 7-201, 7-207(e), (f), and (g), and 7-208(h)
Annotated Code of Maryland
(2008 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,
Article Public Utility Companies
Section 7-208(a) and (e)
Annotated Code of Maryland
(2008 Replacement Volume and 2008 Supplement)

BY adding to
Article – Public Utility Companies
Section 7-5A-01 through 7-5A-04 to be under the new subtitle “Subtitle 7A.
Electric Industry Regulation”
Annotated Code of Maryland
(2008 Replacement Volume and 2008 Supplement)

Preamble

WHEREAS, Chapters 3 and 4 of the Acts of the General Assembly of 1999 enabled electric industry restructuring in the State of Maryland for the purpose of establishing customer choice of electricity supply and electricity supply services, creating competitive retail electricity supply and electricity supply markets, deregulating the generation, supply, and pricing of electricity, providing economic benefits for all customer classes, and ensuring compliance with federal and State environmental standards; and

WHEREAS, After almost 10 years after the enactment of the electric industry restructuring law in the State, competitive retail electric markets have not developed as envisioned under the electric restructuring law; and

WHEREAS, No new sizable generation has been constructed in Maryland since 1992, causing Maryland to meet its energy demand by importing over 30% of its electricity from out-of-state and resulting in ratepayers being assessed high capacity and congestion charges as part of electricity rates; and

WHEREAS, There continues to be concerns with the reliability of Maryland's energy supply and the transmission capacity needed to meet Maryland citizens' demand for energy; and

WHEREAS, Deregulation has not produced a desired economic result or ensured the availability of affordable energy for Maryland energy consumers; and

WHEREAS, The use of integrated resource planning provides an approach to ensure that the means to meet Maryland's energy needs are reliable, cost effective, and consistent with state economic and environmental policies; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Utility Companies

7–201.

(A) (1) (I) EACH YEAR, IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMMISSION, AN ELECTRIC COMPANY SHALL DEVELOP AND SUBMIT TO THE COMMISSION A LONG-RANGE PLAN REGARDING THE ELECTRIC COMPANY'S ELECTRICITY NEEDS AND PROPOSED MEANS TO MEET THOSE NEEDS.

(II) AN ELECTRIC COMPANY'S LONG-RANGE PLAN SHALL ADDRESS EACH OF THE ISSUES SPECIFIED IN PARAGRAPH (4) OF THIS SUBSECTION.

(2) EACH YEAR, THE COMMISSION SHALL EVALUATE THE LONG-RANGE PLANS OF THE STATE'S ELECTRIC COMPANIES REGARDING ELECTRICITY NEEDS AND THE MEANS TO MEET THOSE NEEDS.

(3) (I) UPON COMPLETION OF THE ANNUAL EVALUATION OF THE LONG-RANGE PLANS UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COMMISSION SHALL ISSUE ORDERS AS APPROPRIATE TO EACH ELECTRIC COMPANY TO IMPLEMENT THE PLAN.

(II) THE COMMISSION'S ORDERS SHALL INCLUDE:

1. SCHEDULES FOR THE IMPLEMENTATION OF THE PLAN; AND

2. REQUIREMENTS FOR THE ELECTRIC COMPANY TO REPORT ON THE STATUS OF THE IMPLEMENTATION OF THE PLAN.

(4) IN DEVELOPING AN ANNUAL PLAN AND AN ORDER UNDER THIS SUBSECTION, AN ELECTRIC COMPANY AND THE COMMISSION SHALL CONSIDER:

(I) FOR A NEW ELECTRICITY GENERATION FACILITY, THE APPROPRIATE TYPE OF FUEL OR TYPE OF RENEWABLE ENERGY SOURCE;

(II) IN ADDITION TO THE REQUIREMENTS OF § 7-211 OF THIS TITLE, THE NEED TO DEPLOY ENERGY EFFICIENCY, CONSERVATION, AND DEMAND RESPONSE PROGRAMS;

(III) IN CONSIDERATION OF THE STATE'S RENEWABLE ENERGY PORTFOLIO STANDARD, THE APPROPRIATE ELECTRICITY SUPPLY MIX FOR THE STATE;

(IV) THE POTENTIAL IMPACT ON RATES AND CHARGES PAID BY CUSTOMERS;

(V) THE POTENTIAL IMPACT ON THE SERVICES AND CONDITIONS OF OPERATION OF THE ELECTRIC COMPANY; AND

(VI) ANY OTHER ISSUES THE COMMISSION CONSIDERS RELEVANT IN RELATION TO THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

(5) THE COMMISSION SHALL, BY REGULATION OR, NOTWITHSTANDING TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BY ORDER, ADOPT PROCEDURES TO IMPLEMENT THIS SECTION.

(B) (1) **[Annually] EACH YEAR**, the Chairman of the Commission shall forward to the Secretary of Natural Resources a 10–year plan listing possible and proposed sites, including the associated transmission routes, for the construction of electric plants within the State.

(2) (i) The Chairman shall delete from the 10–year plan any site that the Secretary of Natural Resources identifies as unsuitable in accordance with the requirements of § 3–304 of the Natural Resources Article.

(ii) The Chairman may include a site deleted from a 10–year plan under subparagraph (i) of this paragraph in a subsequent 10–year plan.

(3) The Chairman shall include information in the annual 10–year plan on current and projected efforts by electric companies and the Commission to **MEET EXPECTED CONSUMER DEMAND AND TO** moderate overall electrical generation demand and peak demand through the electric companies’ promotion of energy conservation by customers and through the electric companies’ use of alternative energy sources, including cogeneration.

(4) To the extent that the Commission requires an electric company to report the information described in paragraph (3) of this subsection, a small rural electric cooperative described in § 7–502(a) of this title may satisfy the requirement by submitting to the Commission a copy of the power requirement study that the small rural electric cooperative submits to the rural utilities service.

(5) IN ADDITION TOTHE PROVISIONS OF TITLE 3, SUBTITLE 3 OF THE NATURAL RESOURCES ARTICLE, THE COMMISSION MAY DIRECT AN ELECTRIC COMPANY TO ACQUIRE, IN ACCORDANCE WITH TITLE 12 OF THE REAL PROPERTY ARTICLE, A SITE THAT IS SUITABLE FOR AN ELECTRIC POWER GENERATION FACILITY.

[(b)] (C) (1) The Commission shall evaluate the cost–effectiveness of the investments by electric companies in energy conservation to reduce electrical demand and in renewable energy sources to help meet electrical demand.

(2) The evaluation of investments shall include:

(i) the electric companies’ promotion and conduct of a building audit and weatherization program, including low–interest or no–interest electric company financing for the installation of energy conservation materials and renewable energy devices;

(ii) utilization of renewable energy sources;

and wastes; and

- (iii) promotion and utilization of electricity from cogeneration

- (iv) widespread public promotion of energy conservation programs.

7-207.

(e) The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

- (1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station or overhead transmission line is proposed to be located; [and]

- (2) THE NEED TO MEET EXISTING AND FUTURE DEMAND FOR ELECTRIC SERVICES; AND**

- [(2)] (3)** the effect of the generating station or overhead transmission line on:

- (i) the stability and reliability of the electric system;

- (ii) economics;

- (iii) esthetics;

- (iv) historic sites;

- (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

- (vi) when applicable, air and water pollution; and

- (vii) the availability of means for the required timely disposal of wastes produced by any generating station.

[(f) For the construction of an overhead transmission line, in addition to the considerations listed in subsection (e) of this section, the Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of the need to meet existing and future demand for electric service.]

[(g)] (F) (1) The Commission may not authorize, and an electric company may not undertake, the construction of an overhead transmission line that is aligned with and within 1 mile of either end of a public airport runway, unless:

(i) the Federal Aviation Administration determines that the construction of an overhead transmission line will not constitute a hazard to air navigation; and

(ii) the Maryland Aviation Administration concurs in that determination.

(2) A privately owned airport runway shall qualify as a public airport runway under this subsection only if the runway has been on file with the Federal Aviation Administration for at least 2 years as being open to the public without restriction.

(G) The Commission shall consider and take final action on an application for a certificate of public convenience and necessity in an expeditious manner if the application is for the construction of a generating station:

(1) that is designed to provide electricity for a single electric customer that uses at least 1,500,000,000 kilowatt hours of electricity each year; and

(2) with a generating capacity that does not exceed 750 megawatts.

7-208.

(a) This section applies to any person:

(1) constructing a generating station and its associated overhead transmission lines designed to carry a voltage in excess of 69,000 volts; or

(2) exercising the right of condemnation in connection with the construction.

(e) Within 90 days after the conclusion of the hearing on an application under this section, the Commission shall:

(1) (i) grant a certificate of public convenience and necessity unconditionally;

(ii) grant the certificate, subject to conditions the Commission determines to be appropriate; or

(iii) deny the certificate; and

(2) notify all interested parties of its decision.

(h) The grant of a certificate by the Commission to any person under subsection (e) of this section constitutes:

(1) authority for the person to dredge and construct bulkheads in the waters or private wetlands of the State and to appropriate or use the waters; [and]

(2) registration and a permit to construct, as required under Title 2, Subtitle 4 of the Environment Article; AND

(3) AUTHORITY OF ANY ELECTRIC COMPANY TO CONDEMN, IN ACCORDANCE WITH TITLE 12 OF THE REAL PROPERTY ARTICLE, AS APPROVED BY THE COMMISSION TO MEET THE NEEDS OF CONSTRUCTION AUTHORIZED UNDER THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

SUBTITLE 5A. ELECTRIC INDUSTRY REGULATION

7-5A-01.

NOTWITHSTANDING ANY PROVISION OF SUBTITLE 5 OF THIS TITLE, THE PROVISIONS OF THIS SUBTITLE SHALL APPLY TO THE ELECTRIC INDUSTRY IN THE STATE.

7-5A-02.

THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO:

- (1) ON-SITE GENERATED ELECTRICITY;**
- (2) ELECTRICITY GENERATED FROM A WASTE-TO-ENERGY GENERATION FACILITY;**
- (3) A MUNICIPAL ELECTRIC UTILITY;**
- (4) A SMALL RURAL ELECTRIC COOPERATIVE;**
- (5) A GENERATION FACILITY OF LESS THAN 30 MEGAWATTS IN CAPACITY;**
- (6) A RENEWABLE ON-SITE GENERATOR, AS DEFINED IN § 7-701 OF THIS TITLE;**

(7) AN ELIGIBLE CUSTOMER–GENERATOR, AS DEFINED IN § 7–306 OF THIS TITLE;

(8) AN ELECTRIC GENERATION FACILITY THAT IS OWNED OR CONTROLLED BY A UNIT OF LOCAL GOVERNMENT; OR

(9) A GENERATING STATION THAT IS EXEMPT FROM THE REQUIREMENT TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER § 7-207.1 OF THIS TITLE.

7-5A-03.

(A) IN ACCORDANCE WITH THE PROVISIONS OF § 7-201 OF THIS TITLE, ON A DETERMINATION THAT THE STATE OR A DISTRIBUTION TERRITORY IN THE STATE REQUIRES ADDITIONAL ELECTRICITY RESOURCES, WHEN THE COMMISSION DETERMINES IT IS IN THE PUBLIC INTEREST, THE COMMISSION SHALL:

(1) ORDER ONE OR MORE ELECTRIC COMPANIES TO BUILD AN ELECTRIC GENERATION FACILITY;

(2) ORDER ONE OR MORE ELECTRIC COMPANIES TO PROCURE THE NECESSARY ELECTRICITY THROUGH:

(i) A BILATERAL CONTRACT WITH ANOTHER PERSON FOR ALL OR PART OF THE OUTPUT OF A NEW ELECTRIC GENERATION FACILITY LOCATED IN THE STATE; OR

(ii) A COMPETITIVE BIDDING PROCESS IN WHICH THE ELECTRIC COMPANY WILL SOLICIT BIDS FOR ALL OR PART OF THE OUTPUT OF A NEW ELECTRIC GENERATION FACILITY LOCATED IN THE STATE; OR

(3) ORDER ONE OR MORE ELECTRIC COMPANIES TO PROCURE THE NECESSARY ELECTRIC CAPACITY FROM A MIX OF GENERATION AND OTHER ELECTRICITY RESOURCES, INCLUDING ENERGY EFFICIENCY, CONSERVATION, AND DEMAND RESPONSE RESOURCES.

(B) THE PRICE OF ELECTRICITY THAT IS ACQUIRED UNDER SUBSECTION (A) OF THIS SECTION AND IS SOLD TO A RETAIL CUSTOMER OF AN ELECTRIC COMPANY SHALL BE REGULATED BY THE PUBLIC SERVICE

COMMISSION UNDER COST-OF-SERVICE REGULATION PRINCIPLES IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE.

(C) (1) THIS SUBSECTION DOES NOT APPLY TO AN ELECTRIC GENERATION FACILITY FOR WHICH:

(I) APPLICATION WAS MADE TO THE COMMISSION, ON OR BEFORE MARCH 1, 2009, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR AN ELECTRIC GENERATION FACILITY UNDER SUBTITLE 2 OF THIS TITLE; AND

(II) THE APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY WAS PENDING BEFORE THE COMMISSION AS OF MARCH 1, 2009.

(2) AN ELECTRIC GENERATION FACILITY MAY NOT BE CONSTRUCTED IN THE STATE UNLESS IT IS CONSTRUCTED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

(D) (1) ON OR BEFORE DECEMBER 1, 2009, THE PUBLIC SERVICE COMMISSION SHALL EVALUATE WHETHER AND HOW TO CONTINUE A PROGRAM OF CUSTOMER CHOICE OF ELECTRICITY SUPPLY AND ELECTRICITY SUPPLY SERVICES UNDER SUBTITLE 5 OF THIS TITLE.

(2) IF THE COMMISSION CONCLUDES THAT A PROGRAM OF CUSTOMER CHOICE OF ELECTRICITY SUPPLY AND ELECTRICITY SUPPLY SERVICES SHOULD NOT CONTINUE, THE COMMISSION SHALL DEVELOP A PLAN TO TRANSITION FROM THE PROGRAM OF CUSTOMER CHOICE OF ELECTRICITY SUPPLY AND ELECTRICITY SUPPLY SERVICES.

(3) THE TRANSITION PLAN SHALL SPECIFY:

(i) THE CLASSES OF CUSTOMERS THAT SHALL TRANSITION FROM A PROGRAM OF CUSTOMER CHOICE OF ELECTRICITY SUPPLY; AND

(ii) A SCHEDULE FOR THE TRANSITION THAT TAKES INTO ACCOUNT EXISTING CONTRACTS FOR RETAIL ELECTRICITY SUPPLY.

7-5A-04.

THE COMMISSION SHALL BY REGULATION OR, NOTWITHSTANDING TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, BY ORDER ADOPT PROCEDURES TO IMPLEMENT THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) On or before July 1, 2009, the Public Service Commission shall initiate a proceeding to investigate the electricity needs of the State.

(2) The Commission's investigation shall include an evaluation of:

(i) whether the Commission should direct the construction of one or more electric generation facilities and, if so, the appropriate electric capacity and type of fuel;

(ii) whether the Commission should direct, in addition to the requirements of § 7-211 of the Public Utility Companies Article, the implementation of alternative electricity supply resources such as energy efficiency, conservation, and demand response; and

(iii) any other issues the Commission considers relevant.

(b) On or before December 31, 2009, the Public Service Commission shall provide a status report to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2009.